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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1895.

No. 955.

IN THE MATTER OF THE PETITION OF EUGENIA CRIMP, EXECUTRIX, ETC., FOR A WRIT OF *CERTIORARI* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Brief showing cause against the allowance of said Petition.

CHARLES M. STURGES,
Solicitor and of Counsel for the North Western National Bank of Chicago, one of the Appellees in said Circuit Court of Appeals.

WILLIAM E. CHURCH,
Of Counsel for other Appellees below.

BARNARD & MILLER PRINTERS CHICAGO.

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No. 955.

IN THE MATTER OF THE PETITION OF EUGENIA CRIMP, EXECUTRIX, ETC., FOR A WRIT OF *Certiorari* TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF SHOWING CAUSE AGAINST THE ALLOWANCE OF SAID PETITION.

STATEMENT OF THE CASE.

The petitioner Eugenia Crimp, Executrix of the Will of William G. Crimp, deceased, prays herein the allowance of a writ of *Certiorari* (under the provisions of Sec. 6 of Act of Congress of March 3, 1891, commonly known as the Circuit Court of Appeals Act), to bring before this Court for review in error the record and proceedings lately had in the United States Circuit Court of Appeals for the Seventh Circuit, in an appeal in equity lately there pending, wherein said petitioner was *appellant*, and the McCormick Construction Company and others were *appellees*.

Pursuant to the rule of this Court, the petitioner has

submitted as a part of her application a (printed) record etc. of the case in said Circuit Court of Appeals.

An inspection of that record will show :

That Dec. 4, 1893, said petitioner filed in the court of original jurisdiction (the Circuit Court of the United States for the Northern District of Illinois) her bill in equity (Printed Record, pp. 2-12) against the McCormick Construction Company, an insolvent corporation, and R. P. McCormick, defendants, therein averring that her testator, William G. Crimp, and she as his legal representative, had rights and equities against said corporation and its assets, and against said McCormick, growing out of a certain contract alleged in the bill (which contract is set out at large in said petition to this Court; Printed Petition, pp. 7-15; and also in the Printed Record, pp. 89-95) and praying, with other relief, the appointment of a receiver for said corporation; that such a receiver (Patrick J. Sexton) was appointed (Printed Rec. p. 13); that said defendants answered the bill (Printed Rec. pp. 13-31); that said receiver under order of court (Printed Rec. pp. 38-40) converted the assets of the corporation into money, realizing therefor a gross fund of $41,000 (Printed Rec. p. 54); that sundry creditors of said corporation by leave of court (Printed Rec. pp. 39-40) intervened against said fund, and set up their claims thereto as paramount to those of said petitioner; that petitioner's contention for priority against said fund was referred to William M. Booth, Esq., a Master in Chancery of the court, (Printed Rec. p. 88) who reported against such priority (Printed Rec. pp. 88-101), finding that the $25,200 for which such priority was claimed was invested by petitioner's testator in stock of the corporation, making him in the full sense a

stockholder therein, and that for said $25,200 so invested in stock, said petitioner could not rank or claim against the assets of said corporation until all of its *bona fide* creditors had been paid in full; that petitioner's exceptions (Printed Rec., pp. 103–105) to said Master's findings and report were heard before Grosscup, District Judge, who overruled the same and confirmed said report (Printed Rec., p. 105), and referred the cause to E. B. Sherman, Esq., a Master in Chancery of the Court, for further proofs touching the claims of the creditors of the corporation (Printed Rec., pp. 106–107); that said Sherman, Master, having filed his report (Printed Rec., pp. 109–132) pursuant to said reference to him, said petitioner filed exceptions thereto (Printed Rec., pp. 133–134), renewing her contention (already disallowed on said hearings before Booth, Master, and Grosscup, District Judge) to rank against said fund for said $25,200 invested in stock; that on final hearing before Bunn, District Judge, petitioner's last mentioned exceptions were overruled, and final distribution of said fund (less receiver's charges, disbursements etc.) was decreed toward the satisfaction of sundry creditors of the corporation, including said petitioner as a creditor in equal rank to the amount of $3,460.84, for moneys advanced by her testator to said corporation over and above said $25,200 invested in its stock (Printed Rec., pp. 137–142); that said petitioner appealed from said final decree to the United States Circuit Court of Appeals for the Seventh Circuit (Printed Rec., pp. 142–145); that said appeal was heard in said Circuit Court of Appeals on an abbreviated record, and under restrictions as to the questions to be raised on said appeal, both as stipulated in the record (Printed Rec., pp. 184–188); that said Cir-

cuit Court of Appeals (Woods, Jenkins and Showalter, Circuit Judges, sitting therein) heard said appeal, and (no judge dissenting) affirmed said decree (Printed Rec., pp. 189–199); that said petitioner filed her petition in said Circuit Court of Appeals for a rehearing, which petition, having been heard and considered by said Court (the same judges sitting therein) was (no judge dissenting) overruled and denied, a further opinion of said court being filed thereon (Printed Rec., pp. 200–207); and that no application of said petitioner to said Circuit Court of Appeals to certify any question in said cause to this (the Supreme) Court appears of record to have been either made or denied.

It further appears from the record that the original defendants to the bill abandoned its defense (Statement of W. D. Washburn, their counsel, Printed Rec., p. 188); that on such abandonment the controversies which remained, and were litigated and determined below, were solely between said petitioner and said intervening creditors, in the matter of their respective equities and priorities as against said fund, by the receiver's conversions brought within the jurisdiction of the court for its administration thereon; that the net fund so produced was on final decree barely sufficient to satisfy the allowed claims of the intervening creditors, after rejecting the petitioner's demand for priority or equality in respect of said $25,200 invested by her testator in stock of the corporation (Printed Rec., pp. 137–142); and that the petitioner made no question as to the validity of the indebtedness to creditors established by the final decree, she contending only for priority or equality against said fund in respect of said $25,200. (Stipulation: Printed Rec., p. 184.)

Upon this summary of the record, and upon such further scrutiny of its tenor as it shall please this Court to make, it is respectfully submitted that the extraordinary jurisdiction to award the writ applied for is not legitimately invoked by the petitioner.

The questions involved in the contentions below were of common equitable cognizance and occurrence. They concerned merely the administration and distribution of the assets of an insolvent corporation, and an ascertainment of and adjudication on conflicting claims set up against the same. With whatever variation in details of fact they were, in their general nature, of like character to those ordinarily arising in such cases.

Whether petitioner's testator was, or was not, a stockholder in the McCormick Construction Company; whether he did, or did not, have a valid pledge or lien on any part of its assets as against its creditors; and whether or not he, or his executrix, could rank against the fund produced by the conversion of those assets in priority to, or *pari passu* with such creditors; these are not understood to be questions "of peculiar gravity or general importance" falling within the *criteria* announced by Mr. Justice Gray, (in *American Construction Co.* v. *Jacksonville, etc. Railway Co.*, 148 U. S., 372, 383) as controlling this court in the exercise of its jurisdiction invoked in this case; nor are they understood to be questions of a character to command such exercise, under the principles further, for the instruction of litigants and counsel, laid down by this court in:

Lau Ow Bew, Petitioner, 141 U. S., 583.

In re Woods, 143 U. S., 202.

Lau Ow Bew v. *United States*, 144 U. S., 47.

Columbus Watch Co. v. *Robbins*, 148 U S., 266.

In re Fabre, Petitioner, cited in 148 U. S., 383.

Should the jurisdiction in question be successfully invoked on this petition, it is respectfully believed that its exercise could hardly thereafter be consistently declined in *any* cause of considerable pecuniary magnitude finally decided by any Circuit Court of Appeals.

It is perhaps unnecessary to advert to the successive hearings below (by Booth and Sherman, Masters in Chancery, by Grosscup and Bunn, District Judges, and by the Justices of the Circuit Court of Appeals on the original hearing and on the application for rehearing) disclosed by the record to have been patiently and extendly accorded to the contentions of the petitioner; or to point out the uniform concurrence in judicial conclusions below on those contentions; or to refer to the fidelity with which her eminent and learned counsel (what page of the record is not full of their labors!) have continuously and tenaciously pressed them for repeated adjudication—a fidelity which has brought them scrupulously at last to the bar of this Court. It is sufficient to say, that her demands have had most faithful representation and most sedulous consideration below.

Interest reipublicae ut sit finis litium. It is well understood that the Circuit Court of Appeals Act of March 3, 1891, was designed to give large vigor to that principle in its relations to the functions and business of this Court. To that end the ordinary finality of adjudications in the *new* tribunals of review, provided by the Act, is of course requisite. Parties for whom rights are

jurisdictionally determined by these tribunals should, unless in extraordinary cases, have a rest from further litigation. It was so intended.

The little postern-gate in Section 6 (at which the petitioner now knocks) has been held by this Court to be "strait and narrow." It was not framed to afford to dissatisfied suitors in the new courts of review easy egress therefrom—to prospect for other fortunes in another court.

CHARLES M. STURGES,

Solicitor and of Counsel for the North Western National Bank of Chicago, one of the Appellees below.

WILLIAM E. CHURCH,

Of Counsel for other Appellees below.